In the High Court of Uttaranchal at Nainital.

Criminal Revision No. 44/2004.

Upkar Singh S/o Har Pal Singh
R/o village Pachpeda Farm,
P.S. Sitargunj, District U.S. Nagar ……Revisionist.

Vs.

State of Uttaranchal …….Respondent.

Hon'ble Irshad Hussain, J.

Heard Sri Sudhir Kumar learned counsel for the revisionist, Sri Udhyogh Shukla learned counsel for the complainant and Sri A.Rab learned Additional Government Advocate and perused the record.

2- This criminal revision under section 397/401 of the Code of Criminal Procedure (for short 'Code') has been fie ld against the impugned order dated 9-3-2004 passed by the Sessions Judge, Udham Singh Nagar in Sessions Trial No. 75/2003, rejecting the application of the accused-revisionist preferred under section 223 of the 'Code'.

3- In case crime No. 312/2001 after investigation charge sheet was submitted against the number of accused persons and those have appeared according to law before the Magistrate concerned they were committed to court of Sessions. Sessions Trial No. 388/2002 was then registered and they are facing trial. Evidence of the prosecution witnesses except the investigating officer had been recorded. The revisionist-accused was also nominated as an accused in the F.I.R. He was not available and when he surrendered he was sent up to stand trial before the Sessions later on by the concerned Magistrate. Sessions Trial No. 75/2003 was thus registered.

4- An application under section 223 of the 'Code' was moved by the revisionist-accused praying that the Sessions Trial No. 75/2003 be consolidated with the Sessions Trial No. 388/2002 and thereafter evidence of the prosecution be recorded treating the Sessions Trial No. 388/2002 as the leading case. The application was rejected by the

learned Sessions Judge by the impugned order on the premise that all the witnesses of the prosecution except the I.O. have already been examined in Sessions Trial No. 388/2002. Learned counsel for the revisionist-accused submitted that under law it was incumbent to consolidate the two session trials as they arise out of the same occurrence. No doubt the occurrence was the same but it was not justified to consolidate the two sessions trials when in the other session trial almost all the witnesses of the prosecution had been recorded. If witnesses of fact and others were to be recalled after consolidating the two session trials it will prejudice the cause of the prosecution by reason of some contradictions which may appear in the evidence of the witnesses who have earlier deposed against the accused of the Sessions Trial No. 388/2002. In the fact of the facts of the case the decision of the Apex Court in the matter of **Kadiri Kunhahammad vs. The State of Madras; A.I.R. 1960 Supreme Court 661** relied upon by the learned counsel for the revisionist-accused has no application. The reason is that in the case before the Apex Court almost all the evidence of the prosecution was not recorded in one of the case with which the another case sought to be consolidated.

5- For the reasons aforesaid the revision petition lack merit and is hereby dismissed.

(Irshad Hussain, J.)

Dated: 7-4-2004.

ISB